opinion on the point) that the appellant might have come within the scope of exception (c) to the definition of moneylender which has been mentioned. As, however, the respondent's version was accepted that question did not arise. The respondent's version, once it was accepted, established that the money had been lent in consideration of a larger sum being repaid and so raised against the appellant by reason of section 3 the presumption that when the money was lent he was a moneylender.

Mr. Narain Sharma for the appellant has contended that the President was wrong in holding that the appellant had failed to rebut that presumption. He pointed out that the question was not one of whether the appellant had lent money but was one of whether at the time when the money was lent he was carrying on the business of moneylending. He said there was no evidence that the appellant had lent money to anybody except the respondent in 1952 or 1953 and argued that on that the President should have held that he was not carrying on the business of lending money. He cited the Singapore case of *Esmail Sahib v. Noordin*[1] and the English cases of *Newton v. Pyke*[2], *Kirkwood v. Gadd*[3] and *Newman v. Oughton*[4], and on the authority of these cases he submitted that in order to establish that a person is carrying on the business of moneylending it is not sufficient to shew that he has occasionally lent money at a remunerative rate of interest but that it is necessary to prove some degree of system and continuity in his moneylending transactions. I accept that as a correct statement of the law though in its application it has to be remembered that here and in Singapore once a single moneylending transaction is proved against a party then the onus of proving that he is not carrying on the business of moneylending passes to him. In this connection it is to be observed in considering the way in which the English Courts have applied the law to the facts of individual cases that the English Moneylenders Act of 1900 contains no 'reversal of onus' provision similar to our section 3.

I am impressed with the strength of Mr. Sharma's argument which, indeed, if the premises upon which it is based were sound would be virtually unanswerable. To my mind, however, it overlooks certain very material portions of the evidence. The appellant himself admitted that before 1952 he carried on business as a moneylender. It was proved that on at least one occasion in 1953 he lent money at interest. He admitted that he had a moneylender's licence for 1954 and at the trial he described himself as a moneylender. To that is to be added the consideration that the Moneylenders Ordinance came into force on 31st March, 1952, and that the pre-existing legislation (Cap. 63) contained no provisions relating to the licensing of moneylenders.

The whole question to be decided was a question of fact (See *Kirkwood v. Gadd*[3], *supra*) and there was evidence on both sides. By reason of the provisions of section 3 of the Ordinance the appellant had to satisfy the Court that the balance of reasonable probability was that during the year 1953 he was not carrying on the business of moneylending and his admissions that he was carrying on that business prior to 1952 when for the first time a licence became necessary to carry it on and that he had taken out a licence in 1954 were relevant and admissible against him. The only explanation he gave of the alleged lapse of his activities in 1952 and 1953 was that he had no money in 1952. That may well be but he clearly had money in 1953 for he lent it to the respondent.

On the whole of the evidence as it stands I am not prepared to say that the President came to a wrong conclusion in holding that the appellant had failed to discharge the onus which rested upon him. I am fortified in that view by the consideration that a certain element of the credibility to be attached to the appellant's evidence was involved and that on that point the President has enjoyed the advantage of necessity denied to me of having heard him and seen him.

I have some small sympathy with the appellant in losing his money possibly as a result of his failure to appreciate the effect of recent legislation which effected drastic changes in the law. Also I do not think the respondent is a person whom the legislature sought to protect. He has had the money for the purposes of his business and he has deliberately pleaded the Moneylenders Ordinance not to escape from the burden of excessive interest but to avoid paying the money back. At the time he borrowed the money he may not have known that the appellant had not taken out a moneylender's licence but he certainly knew that he was a moneylender. Be that as it may hard cases make bad law and the President would not have been justified (nor would I) in flying in the face of provisions of the Ordinance.

The appeal is dismissed with costs.

Appeal dismissed.

J. S. DRINKHALL v. NAM HUE MOTOR HIRING

[O. C. J. (Murray-Aynsley C.J.) June 23, 1955]
[Singapore — Suit No. 148 of 1951]

Limitation — Claim for personal injuries limited to one year period — Whether subsequent amendment of the law to period of 3 years revives writ already issued.

An accident took place on February 4, 1950 in which the plaintiff in this case sustained personal injuries. A writ against the defendant was issued on March 1, 1951.

At that time the period of limitation for personal injuries was one year, and the defendants pleaded limitation.

On March 22, 1953 the period of limitation was increased from one year to three years.

Held: the law must be considered at the date when the writ was issued and therefore a claim barred at the time when the writ was issued was not revived by a subsequent amendment of the law.

[Editorial Note: The learned Chief Justice in Noor Mohamed Yousoff v. Teo Kai Tee & Anor. (1953) M.L.J. 188 had to consider the effect of the amendment to the Limitation Ordinance. In the course of his judgment he said, "I do not think that in these days, unless there is ambiguity, it is possible to rely on any supposed presumption against retrospective operation of statutes or on any difference between the effect of legislation on substantive and adjectival law." In that case he held that a mere amendment could not be treated as a partial repeal.]

Case referred to:—

(1) *Allah Rakhi & Ors. v. Shah Mohammad & Ors.* I.L.R. 56 All. 111; A.I.R. 1934 P.C. 77.

ACTION.

J. E. Lloyd for the plaintiff.

N. L. Macassey for the defendant.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — This concerns a point of law. The question is whether the action is barred by limitation.

An accident took place on February 4, 1950, in which the plaintiff sustained personal injuries. Other damages resulted to the property of the plaintiff. The writ was issued on March 1, 1951. At that time the period of limitation for personal injuries was one year. Therefore at the time it was issued the claim for personal injuries was statute barred and the plea of limitation in the Defence filed on May 21, 1952 was good.

On March 22, 1953, by an amendment to the Limitation Ordinance the period of limitation was increased to 3 years. There was nothing in the Ordinance which referred to the effect of the amendment on pending claims. It should be noted that when the amendment came into force more than three years had elapsed since the accident. It appears to me that the Privy Council case of *Allah Rakhi & Ors. v. Shah Mohammad & Ors.*[1] applies. The judgment in that case appears to lay down a general principle (at p. 116) that the law must be considered at the date when the writ is issued, and therefore a claim barred at the time when the writ is issued is not revived by a subsequent amendment of the law. The defendants succeed on the issue and the order must be that the claim of the plaintiff so far as it relates to personal injuries is barred. The defendants are entitled to the costs of the issue.

Action dismissed.

Solicitors: *Drew & Napier; Battenberg & Talma.*

REGINA v. GOH BOON KWAN

[Case stated (Murray-Aynsley C.J.) June 23, 1955]
[Singapore — Special Case No. 2 of 1955]

Probation of Offenders Ordinance, 1951, ss. 5 and 8 — Sentence fixed by law — Meaning of — Court of Criminal Appeal Ordinance (Cap. 11).

This was a reference to the High Court on a case stated under the provisions of s. 317 of the Criminal Procedure Code (Cap. 21). The accused in this case was charged with the offence of cheating in respect of a pressure lamp valued at $40 punishable under s. 420 of the Penal Code. The learned Magistrate found the accused guilty. As the article involved was of small value and as the accused had no previous conviction, the learned Magistrate discharged the accused on condition that he commit no offence for a period of 12 months under the provisions of s. 8 of the Probation of Offenders Ordinance. The matter was referred to the High Court as the learned Magistrate was doubtful whether he had power to apply the Probation of Offenders Ordinance to cases where an accused person is found guilty under a section of the Penal Code like s. 420 which appears to make the imposition of the penalty of imprisonment mandatory.

Held: the words "fixed by law" means a sentence which is fixed both in quantum and kind and therefore in this case the sentence under s. 420 of the Penal Code was not fixed by law and the learned Magistrate had discretion to act under the Probation of Offenders Ordinance.

[Editorial Note: S. 317 of Criminal Procedure Code (Cap. 21) has been repealed and replaced by s. 306 of the Criminal Procedure Code, 1955. This new section is based on the provisions of the Summary Jurisdiction Act, 1857 and the Administration of Justice (Miscellaneous Provisions) Act, 1938 and provides not merely for the reservation by Inferior Courts of points of law but also for cases to be stated for the consideration of the High Court on the application of the parties.]

CASE STATED.

A. V. Winslow (Crown Counsel) for the Crown.

Mary Lim Cheow Sim, amicus curiae.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — This Case Stated by the learned Magistrate raised a question of interpretation of the Probation of Offenders Ordinance (27 of 1951), viz. the meaning of the term "a sentence for which is fixed by law" in sections 5 and 8.

These sections were copied from the English Act which, however, contained a definition which was omitted here. The matter gives rise to difficulties because the Penal Code contains sections, e.g. 420, where a sentence of imprisonment is mandatory.

The words "fixed by law" are found in the Criminal Appeal Act and the corresponding Ordinance. There it has been taken to mean a sentence fixed both in quantum and kind. In view of the anomalous results of a strict interpretation of the term, which would involve passing sentences of imprisonment which the Ordinance under consideration sought to avoid, I am constrained to give the term the same meaning as it has in the Criminal Appeal Ordinance.

Solicitors: *Battenberg & Talma.*